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86-181

No._____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1986

PATRICIA A. DIXON,
Petitioner,

vs.

WESTINGHOUSE ELECTRIC CORPORATION,
Respondent.

PETITION FOR CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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18 pp

QUESTION PRESENTED FOR REVIEW

Is a Title VII charge "initially instituted" with a State Agency, thereby triggering Section 706(e)'s 300-day extended charge filing period, where pursuant to a Work Sharing Agreement with Equal Employment Opportunity Commission, the State Agency allocates to the Commission its initial processing of the charge under Section 706(c). Whether the Fourth Circuit's opinion is in conflict with Love vs. Pullman, 404 U.S. 522 (19781) and Mohasco Corp. vs. Silver, 447 U.S. 807 (1980).

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PARTIES TO THE PROCEEDING

At the commencement of this action, Ms. Dixon was Plaintiff, Westinghouse Electric Corp. was Defendant. At the Appellate level Equal Employment Opportunity

Commission (hereinafter referred to as The EEOC) participated in this action by filping an Amicus Curiae brief. After the decision was rendered by the Fourth Circuit Court of Appeals, The EEOC filed a Motion for Intervention, and lodged a Petition for Rehearing and Suggestion for Rehearing En Banc. The Fourth Circuit has not yet ruled on these motions.

REFERENCE TO THE OFFICIAL REPORTS BELOW

The Honorable Judge Young filed his Memorandum and Order August 19, 1985. The opinion is found at 40 FEP Cases 793 (1985). The opinion of the Court of Appeals, rendered on April 10, 1986, is found at 787 F.2d 943 (1986).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

STATUTES AND REGULATION INVOLVED IN THE PRESENT ACTION

1. Section 705(g)(1) of Title VII, 42 U.S.C. 2000(e)-4(g)(1):

> The Commission shall have power--
> (1) to cooperate with and, with their consent, utilize regional state, local, and other agencies, both public and private, and individuals:

2. Section 706(c) of Title VII, 42 U.S.C. 2000(e)-5(c):

> (c) In the case of an alleged unlawful employment practice occurring in a state, or political subdivision of a state, which

has a state or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a state or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the state or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a state or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate state or local authority.

3. Section 706(e) of Title VII, 42 U.S.C. Section 2000(e)-5(e):

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and cicumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State of local agency with authority to grant or seek relief from such practice or to institute criminal proccedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the state or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the

Commission with the state or local agency.

4. Section 709(b) of Title VII, 42 U.S.C. 2000(e)-8(b):

> (b) The Commission may cooperate with state and local agencies charged with the administration of state fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the sevices of such agencies and their employees, and,notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such state or local agencies and such agreements may include provisions under which the Commission shall refrain

> from processing a charge in any cases or class of cases specified in such agreements or under which the Commis sion shall relieve any person or class of persons in such state or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

5. 29 C.F.R. Section 1601.13, see Appendix.

6. 1985-1986 Work Sharing Agreement between The EEOC, Baltimore District Office, and the Maryland Commission on Human Relations (herein referred to as The MCHR), see Appendix.

CONCISE STATEMENT OF THE CASE

This is a Title VII-Sex Discrimination case whose facts have created a con-

troversy striking at the heart of the administration of the Title. The Title is administered through a complex set of statutes, regulations and, in some states, agreements between states and The EEOC, called Work Sharing Agreements. The Work Sharing Agreement, as a tool of implementation of Title VII, does not act to bar Petitioner's claim.

Congress recognized that there were state agencies administering state laws and fair employment practices similar to Title VII. In an effort to accord state agencies with fair employment practices (fair employment practice agencies or FEP agencies) a role in the processing of the discrimination claims and to ease the burden on the EEOC of having to investigate each and every charge where federal efforts would be duplicative of state proceedings, the EEOC enacted regulations de-

signating certain agencies as authorized FEP agencies pursuant to Section 706. Maryland is a state with fair employment practice laws. The MCHR under EEOC regulations is a Section 706 FEP agency.

Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000(e) et seq., charges of employment discrimination must be filed with The EEOC within 180 days of the alleged discriminatory act unless the complainant has "initially instituted proceedings" with his/her state or local FEP agency, in which case the federal filing period is extended to 300 days. Section 706(e), 42 U.S.C. 2000(e)-5(e). Section 706(c) of Title VII, 42 U.S.C. 2000(e)-5(c), provides that, "once proceedings have been commenced under the State or local law," a charge cannot be filed with The EEOC until 60 days after those proceedings begin or are earlier

terminated.

In light of this federal-state scheme of resolving employment discrimination complaints, Congress authorized The EEOC to cooperate with FEP agencies [Section 705(g)(1), 4 U.S.C. 2000(e)-4(g)(1)], specifically by entering into written agreements with them in the interest of "effective enforcement of this title." Section 709(b), 42-U.S.C. 2000(e)-8(b). In that regard, The EEOC entered into approximately eighty "Work Sharing Agreements" with state and local FEP agencies nationwide to allocate the work to be shared pursuant to the federal-state scheme. Therefore, these agreements typically state that the State agency will initially process certain categories of Charges and that The EEOC will initially process others, with the State waiving its Section 706(c) right to the sixty day pro-

cessing in the latter instance. See 29 C.F.R. 1601.13(c).

The Charge in this case was processed under a 1981 Work Sharing Agreement under which The EEOC assumed, inter alia, primary responsibility for processing all charges "originally received by The EEOC" as well as "all other charges covered under Title VII which are received by The EEOC between 180 and 300 days after the alleged violation." (p. 57) "In order to facilitate the resolution of charges ... (MCHR) waived its exclusive right to specific periods of initial processing." (p. 58). With respect to the specific charge, The MCHR could exercise its right to process a charge by "express(ing) an interest in pursuing a charge for which it does not have primary responsibility." (p. 59).

Patricia Dixon was employed by

Westinghouse in its Engineering Drafting Department from 1971 until discharged on December 18, 1981. Ms. Dixon alleges that she was discharged because of sex discrimination. Westinghouse contends that the reason for her discharge was because of excessive absenteeism.

On August 4, 1982, 230 days after her discharge, Ms. Dixon filed a Charge of Discrimination with The EEOC. On that day, in accordance with its Work Sharing Agreement, The EEOC sent a copy of Ms. Dixon's Charge to The MCHR accompanied by The EEOC's Transmittal Form 2128. Upon receipt, The MCHR assigned its own number to the Charge and on August 11, 236 days after the discharge, returned Form 2128 to The EEOC indicating thereon that it would not process Dixon's Charge. The MCHR informed Dixon that they had terminated its proceedings because The EEOC could better

process her Charge. The EEOC terminated its processing of Ms. Dixon's Charge in June of 1983 and issued her a Notice of Right to Sue.

Subsequent to the termination of the proceedings before The EEOC and The MCHR , and as a result of the issuance of the Right to Sue Letter, Ms. Dixon filed a Title VII suit. The jurisdiction of the District Court was invoked pursuant to 92 U.S.C., Section 2000(e)-5(f) (1977) and 28 U.S.C., Section 2201 and 2202(1976).

On August 20, 1985, the Honorable Judge Young dismissed Dixon's Claim as being untimely filed. The Court held that Dixon was not entitled to the extended 300-day federal filing period applicable in deferral states because she had not "initially instituted" proceedings with The MCHR, and that her suit was untimely because her Charge was not filed within

the 180 days limitations period applicable in non-deferral states.

The Fourth Circuit Court of Appeals affirmed. It agreed with the District Court that Dixon had not "initially instituted" proceedings with the state agency, on the ground that The EEOC's transmission of the charge to the state was insufficient to constitute institution of state proceedings because the state had waived processing of the charge under the Work Sharing Agreement and, consequently, it "was never contemplated that MCHR would play a substantive role in processing the charge." (p. 51).

ARGUMENTS OUTLINING THE REASONS RELIED UPON FOR THE ALLOWANCE FOR THE WRIT

Appellant strongly urges that a Writ of Certiorari should be granted in this case because:

Argument 1.: The Fourth Circuit's holding that state proceedings were not "initially instituted" within the meaning of Section 706(e), 42 U.S.C. 2000(e)-5(e), conflicts with the decisions of the Supreme Court in Love vs. Pullman, 404 U.S. 522 (1971) and Mohasco Corp. vs. Silver, 447 U.S. 807 (1980), both of which held that The EEOC may institute state proceedings by notifying a state agency of a charge and Oscar Mayer & Co vs. Evans, 441 U.S. 750 (1978), which held that "commencement" of state proceedings may not be conditioned on anything more than the filing of a complaint. These Supreme Court decisions clearly in-

dicate that The EEOC may be the entity which files a charge on behalf of the complainant with the FEP agency.

Argument 2.: The Fourth Circuit's holding that state proceedings were not "instituted" conflicts with the decision of the First Circuit in Isaac vs. Harvard University, 769 F.2d 817 (1st. Cir. 1985) and the cases cited therein, which held that state agency waiver constitutes "termination" of state proceedings under Section 706(c) of Title VII. The decision was, in fact, cited to the Fourth Circuit, but not discussed in their opinion.

Argument 3.: The Fourth Circuit's rationale for its holding, that the lack of MCHR playing "a substantive role in processing the charge" as indicative that the charges in the present case were not ini-

tially instituted proceedings with a state or local agency, is at odds with the rationale of this Court's Summary Dispositions of Ciccone vs. Textron, Inc., 449 U.S. 914 (1980) and Ewald vs. Great Atlantic & Pacific Tea Co., Inc., 449 U.S. 914 (1980) and a decision within the Fourth Circuit, City Corp Person-to-Person Financial Corporation vs. Brazell, 658 F.2d 232 (4th Cir. 1981) which held that state requirements are not preconditions to be read into the expanded federal time charging period, thereby allowing untimely State charges to be entitled to the 300-day filing period.

Argument 4.: The Fourth Circuit is changing the rules midstream!

As urged by the The EEOC in their Petition for Rehearing and Suggestion for Rehearing En Banc, the Fourth Circuit's opinion re-

solves a question of exceptional public importance and, if left untouched, will not only deprive scores of Title VII claimants of their day in Court, but will require wholesale revision of Work Sharing Agreements between The EEOC and state and local agencies to the detriment of federal-state cooperation, and will breed litigation as to whether state agency waiver provisions in Work Sharing Agreements satisfy the deferral requirement of Section 706(c), 42 U.S.C. 2000(e)-5(c), of Title VII. Mohasco and Oscar Mayer, supra, both reject more stringent and onerous requirements on claimants before they are allowed their day in Court.

Argument One

Over fifteen years ago, the Supreme Court in Love vs. Pullman Co., 404 U.S. 522, 523-24 (1971), made clear that the

statute's Section 706 deferral requirements are satisfied, thus clearing the way for federal filing, where, as here, The EEOC notifies the F.E.P. agency of a charge and the agency waives proces sing. In Love, The EEOC telephoned the Colorado Civil Rights Commission to state that it had received a charge of discrimination. By letter, the Colorado Commission "waived the opportunity to take further action on the petitioner's grievance" and The EEOC proceeded with its investigation. 404 U.S. at 524. In holding that this procedure complied with the Act, the Court stated that "[nothing] in the Act suggests that the State proceedings may not be initiated by The EEOC", with the charge held in suspended animation and automatically filed by EEOC upon "termination of state proceedings." 404 U.S. at 525-26 (emphasis supplied). Although the

precise issue was whether the charging party had to "refile" her Charge with The EEOC, it is clear that the Court considered The EEOC's telephone call to have "instituted" state procedings. The Supreme Court stated that this procedure "complied with the purpose both of Section 706(b) [now Section 706(c)] to give state agencies a prior opportunity to consider discrimination complaints, and of Section 706(d) [now Section 706(e)] to ensure expedition in the filing and handling of these complaints." 404 U.S. at 526.

The Court reaffirmed Love in Mohasco Corporation vs. Silver, 447 U.S. 807 (1980), where it held that "state proceedings were instituted by the The EEOC when it immediately forwarded [Silver's] letter to the State agency" (447 U.S. at 816; emphasis supplied) and that, consequently, the timeliness of Silver's EEOC

charge was to be evaluated under Section 706(e)'s extended 300-day filing period. Id. at 817.

Indeed, in light of The EEOC's policy of routinely transmitting charges to deferral agencies, and the limited 60-day duration of the Section 706(c) deferral period, the Court stated that a "Complainant in a deferral state... need only file his charge within 240 days of the alleged discriminatory employment practice in order to insure that his federal rights will be preserved." 447 U.S. at 815 n.16 (emphasis supplied). This unequivocal statement, combined with the Court's recognition in Love that a State's waiver does not diminish The EEOC's ability to "initiate" state proceedings, vitiates the Court of Appeal's decision below, inasmuch as Dixon lodged her EEOC Charge on the 229th day following her discharge and The

EEOC initiated proceedings with MCHR no differently than it did in Love.

The Supreme Court in Oscar Mayer & Co. vs. Evans, 441 U.S. 750 (1978) --construing Section 14(b) of the Age Discrimination in Employment Act [29 U.S.C. 633-(b)] and analyzing the analogous "commencement" provision in Section 706(c) of Title VII-- rejected the notion that "commencement" of state proceedings is conditioned upon anything other than the filing of a complaint. 441 U.S. at 758-60. Indeed, the Court made clear that "[i]ndividuals should not be penalized if states decline, for whatever reason, to take advantage of the[ir] opportunities" "to settle the grievances of [discrimination] claimants..." 441 U.S. at 761 (emphasis supplied). There is no basis for imposing more onerous requirements for the term "instituted" under Section 706(e) than for

the term "commenced" under Section 706(c). Cf. Saulsbury vs. Wismer and Becker, Inc., 644 F.2d 1251, 1256 n.5 (9th Cir. 1980); Smith vs. Oral Roberts Evangelical Association, Inc., 731 F.2d 684, 687-88 (10th Cir. 1984).

Argument 2.

The Fourth Circuit's holding that State proceedings were not "instituted" conflicts with the decision of the First Circuit in Isaac vs. Harvard University, supra, which held that state agency waiver constitutes "termination of the state proceedings under Section 706(c) of Title VII if a case is to be considered terminated before it ever begins." How can there be any requirement of initial consideration by the state when a case is considered terminated before it begins!

The present decision conditions the

availability of the extended federal filing period upon the state's ability and willingness to "play a substantive role in processing the Charge." This interpretation of the necessity of state action is in direct conflict with Isaac vs. Harvard University, supra, which allows the state agency to pre-determine, in conjunction with The EEOC the charges in which it wants to take a substantive role. The Court of Appeals has re-written the plainly worded Statute to require the state to participate on a case-by-case basis and has ignored the only requirement that the charge be "initially instituted" with the state.

Argument 3.

The issue of whether a charge filed with The EEOC or the notice to the state agency had to be done within the appropri-

ate state time limitations for consideration of state action was decided by this Court's Summary Dispositions in two cases, Ciccone vs.Textron Inc., supra, and Ewald vs. Greater Atlantic & Pacific Tea Company, Inc., supra. Both cases came to the Supreme Court where the 300-day period was not extended by the lower Courts to the claimant where the claimant failed to "dilligently seek a state administrat[ive] remedy." Ciccone vs. Textron, Inc., 616 F.2d 1216, 1220 (1980). By rejecting a contention that state filings and timely filings are pre-requisites for the 300-day extension, this Court vacated both decisions below. Moreover, several Circuit Courts have held that a timely charge need not be filed with the state in order to activate the 300-day filing period. City Corp Person-to-Person Financial Corporation vs. Brazell, 658 F.2d 232 (4th Cir.

1981), Rasimis vs. Michigan Department of Mental Health, 714 F.2d 614 (8th Cir. 1983), Owens vs. Ramsey Corporation, 656 F.2d 340 (8th Cir. 1981); Jones vs. Birco Carbide Chemical Co., 691 F.2d 1200 (6th Cir. 1982); Howze vs. Jones and Laughlin Steel Corporation, 750 F.2d 1208 (3rd Cir. 1984).

In Citicorp, supra, 658 F.2d at 234, the Court stated:

> In Oscar Mayer, the Supreme Court held that a somewhat comparable requirement of exhaustion of state remedies under the ADEA could be met by an untimely filing of a charge with the state agency, for Federal statutes did not provide that the prerequisite state charge must be filed within the time limit prescribed by State law.
>
> Oscar Mayer requires that we give Section 706(c) of Title VII a similar construction.

Argument 4.

By conditioning the availability of

Section 706(e)'s 300-day federal filing period upon the state's ability and willingness to "play a substantive role in processing the charge", the Court has contravened Congressional intent. In addi tion, the Court's decision voids hundreds of pending Title VII charges within the Fourth Circuit which were submitted between 181-300 days by laypersons in deferral jurisdictions who had every reason to believe that their charges were perfected with State FEP agencies and timely filed with The EEOC. Furthermore, the decision unravels congressionally authorized Work Sharing Agreements between EEOC and the state's and political subdivisions in this Circuit that represent a laudatory "method of cooperation which has evolved as the practical solution to the concurrent jurisdiction given by Title VII." Isaac vs. Harvard University, supra. The

division of labor achieved by this agreement is predicated on the state's voluntary waiver of their Section 706 exclusive proceeding rights over categories of charges. The Court of Appeals' holding essentially precludes state waiver of any charges filed after 180 days and forces the state to "play a substantive role in processing those charges", without regard to their ability or willingness to do so, in order to perfect a timely federal filing on behalf of the charging party. In addition, FEP agencies may not have the resources to investigate all such charges.

Moreover, under the Court of Appeals' decision, it is doubtful that state and local FEP agencies could safely waive initial processing rights of <u>any</u> category of charges, including those lodged <u>before</u> 180 days. There is no reason to suppose that Congress attached different meanings

to the terms "initially instituted" in Section 706(e)'s limitations provision and "commenced" in Section 706(c)'s deferral requirement. If, as the Court held, a charge over which the State waives initial processing cannot serve to "initially institute [ ] proceedings" with the state, one can forcefully argue that it is equally ineffectual to "commence [ ]" State proceedings under Section 706(c) which must be accomplished to perfect federal filing, regardless of timeliness.

Nothing in the language of Section 706(c) and (e), nor their legislative history, indicates that "commenced" or "initially instituted" means anything more than the terms plainly denote, i.e., that discrimination charges must be brought to the attention of state and local FEP authorities. Supreme Court precedent confirms this interpretation. Here, then,

proceedings were "initially instituted", at the minimum, when The EEOC transmitted a copy of Dixon's Charge to MCHR.

The Court of Appeal's rationale for conditioning the availability of Section 706(e)'s 300-day federal period upon the actual involvement of the FEP agency in initially processing the charge, viz., is that this FEP involvement is deemed to the only purpose for which the extra 120 days beyond the 180-day period was alloted. Such a rationale cannot withstand scrutiny. First, Congress could have tailored Section 706(e) to ensure that it only benefited individuals whose charges were, in fact, first investigated by the state. It did not do so. "[A] Court should [not] read in a time limitation provision that Congress has not seen fit to include...." Mohasco Corp. vs. Silver, 447 U.S. at 816 n.19 (citation ommitted), particularly in

a "statutory scheme in which laymen, unassisted by trained lawyers initiate the process." Love vs. Pullman, supra, 404 U.S. at 527. Cf. The EEOC vs. Shamrock Optical Co., 788 F.2d 491, 493-4 (8th Cir. 1986), concludes that the 300-day period applies, even though state proceedings are "initially instituted' beyond the State limitations period, by stating that "the fact that Section 706(e) tolerates disregard of state procedures and allows some complainants more time than others cannot justify our finding of a requirement in a statute, enacted by Congress, which neither the Supreme Court nor this Circuit nor any other Circuit has recognized".

Second, Dixon and countless others who have lodged their charges with EEOC between 180-300 days, had every reason to believe that EEOC would perfect their charges with the state. Love vs. Pullman,

supra, 404 U.S. at 525; Mohasco, Corp. vs. Silver, supra, 447 U.S. at 817; Isaac vs. Harvard University, supra, 769 F.2d at 819. To condition the timeliness of their charges upon the operation of Work Sharing Agreements between EEOC and FEP agencies, on agreement of which the public is generally unaware, is patently unfair and serves no salutory purpose. The fairer rule, which is faithful to the terms of Section 706(e) and endorsed by the Supreme Court, is to apply the 300-day period to charges filed in a deferral state where the state agency is apprised of such charges, regardless of whether it avails itself of the opportunity to resolve them in the first instance.

The Court of Appeal's decision wrongly impedes the operation of Congressionally authorized Work Sharing Agreements which promote Title VII's goals of

federal-state cooperation, deferral, and expeditious resolution of charges. State waiver of initial processing rights in certain categories of charges is a necessary condition of the "division of labor" achieved by Worksharing. Contrary to the Court's view, such waivers are in full accord with the Statute's deferral requirements. Those requirements were enacted to give state and local FEP agencies "a limited opportunity to settle the grievances of . . . claimants . . .local[ly]. . . so that grievants thereafter have no need or desire for independent federal relief." Oscar Mayer & Co. vs. Evans, supra, 441 U.S. at 761 (Interpreting Section 14(b) of the Age Discrimination in Employment Act, which is substantially similar with regard to deferral provisions of Title VII)(emphasis supplied); New York Gaslight Club, Inc vs. Carey, 447 U.S. 54, 63 (1980) (Ti-

tle VII). See also Doski vs. M. Goldseker Co., 539 F.2d 1326, 1331 (4th Cir. 1976) ("the state or local agency should be given first opportunity to act on the complaint")(emphasis supplied). Under the Work Sharing Agreements, the state has been given an opportunity to resolve claims in the first instance and, even by signing these agreements, the state retains the authority to proceed with a claim of which they are notified if they ellect and has only voluntarily relinquished that opportunity upon termination of consideration of the charge. The purpose of deferral has thus been satisfied.

The Court of Appeals' holding that waiver precludes "institution" of state proceedings for the purpose of obtaining the 300-day federal filing period, and its more ominous suggestion that it precludes deferral altogether would obliterate gains

in federal-state cooperation achieved by Work Sharing Agreements. State waiver of initial processing of any charge received by The EEOC more than 180 days after the discriminatory occurrence is now imposible under the Court's holding, lest the Claimant's federal filing be deemed untimely and his federal rights consequently forfeited. Even as to earlier charges, The EEOC and deferral agencies in the Circuit can abide by FEP waiver provisions only at the risk that the charge would be held invalid for failure to defer under Section 706(c).

Accordingly, as a result of the holding, state agencies will be forced to investigate charges they believe would be better processed by The EEOC or to simply hold the charge for 60 days, whereupon The EEOC will "file" the charge as authorized by Love vs. Pullman. This result flouts

both Section 706(c)'s solicitude for State's wishes during the 60-day deferral period, and Section 706(e)'s goal of expeditious resolution of Title VII claims.

CONCLUSION

This Honorable Court must take charge of the proper administration of Title VII and its filing requirements, thereby establishing uniformity and salvaging work sharing agreements.

Petitioner's charge is an "initially instituted" charge with an FEP agency, and is, thereby, entitled to a federal filing period of 300 days. The period was triggered in accorance with the sanctioned procedures set out in Love and Mohasco, supra, which, in this case, included The EEOC docketing of the charges, transmitting of the charge to The MHRC and The MHRC's election not to proceed. This

election may be made in advance, effect a class of cases and may further be reduced to writing in the form of a Work Sharing Agreement. Isaac, supra. The federal/-state scheme of administering Title VII charges, Statutes, Regulations and Legislative history all support utilization of Work Sharing Agreements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of August, 1986, three copies of the above Petition for Certiorari to the United States Court of Appeals for the Fourth Circuit and Appendix were mailed first class, postage prepaid, to Leonard E. Cohen, Esquire, FRANK, BERNSTEIN, CONAWAY & GOLDMAN, 300 East Lombard Street, Baltimore, Maryland 21202, attorney for Respondent; and three copies were mailed first class, postage prepaid, to Johnny J. Butler, General Counsel (Acting), EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 2401 E Street, N.W., Room 224, Washington, D.C. 20507.

Mark Herman

MARK E. HERMAN

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-2033

Patricia A. Dixon,
Appellant,

vs.

Westinghouse Electric Corporation,
Appellee

and

Equal Employment Opportunity Commission,
Amicus Curiae,/A

and

Equal Employment Advisory Council,
Amicus Curiae,/E

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge. (C/A Y-83-3034)

Argued: February 4, 1986
Decided: April 10, 1986

Before WIDENER and HALL, Circuit Judges, and HAYNSWORTH, Senior Circuit Judge.

Mark E. Herman for Appellant; Leonard E. Cohen (Monte Fried; Mark Santangelo; Frank,Bernstein, Conaway & Goldman on brief) for Appellee; Peggy R. Mastroianni, Equal Employment Opportunity Commission (Johnny J. Butler, Acting General Counsel; Gwendolyn Young Reams, Acting Associate General Counsel; Susan Buckingham Reilly, Assistant General Counsel; Robert E. Williams; Douglas S. McDowell; William S. Franklin; McGuiness & Williams on brief) for Amicus Curiae.

HALL, Circuit Judge:

Patricia A. Dixon appeals from the district court's order granting summary judgment to her employer, Westinghouse Electric Corporation ("Westinghouse"), in her action brought pursuant to Title VII of the Civil Rights Act of 1964 U.S.C. Section 2000e, et seq. We affirm.

I

Dixon was employed by Westinghouse in its engineering and drafting department for more than ten years. On December 18, 1981, she received a mailgram from her supervisor notifying her that she was terminated from her employment.

Thereafter, Dixon filed a grievance concerning her termination with the Salaried Employees Association ("SEA"), of which she was a member. SEA attempted to

resolve the dispute concerning Dixon's termination through its collective bargaining agreement's grievance and arbitration procedures. The matter was grieved at a third step meeting under the local grievance procedure on March 15, 1982, and Westinghouse denied the grievance in writing. The grievance was not advanced to the next step of the grievance procedure -- the national appeal level. Thus, under the collective bargaining agreement, Westinghouse's written denial of the grievance was final and the matter was closed. Subsequently, on August 4, 1982, 230 days after her termination, Dixon filed a charge of sex discrimination with the Equal Employment Opportunity Commission ("EEOC").

In accordance with the Worksharing Agreement between EEOC and the Maryland Commission on Human Relations ("MCHR"), [1/] EEOC transmitted a Charge and Transmit-

tal Form 212-A to MCHR on August 6, 1982. On August 11, 1982, MCHR returned the Form 212-A to EEOC after checking the box which indicated that it would not process the charge. By letter dated August 11, 1982, MCHR informed Dixon that, because EEOC could better process her charge, MCHR had terminated its proceedings.

1/ It is EEOC's practice to enter into "worksharing" agreements with state anti-discrimination agencies in order to eliminate duplication of effort. See 29 C.F.R. 1601.13(c). These agreements assign each agency primary responsibility for investigating different categories of charges. Under section 4.c. of the Worksharing Agreement between MCHR and EEOC, "[t]he EEOC will take primary responsibility for processing all charges originally received by EEOC." In addition, section 4.c.6. provides that the EEOC." is to process all Title VII charges received by it "beyond six (6) months but before 300 days after the alleged violation." Section 4.d. states that the state agency "waives its exclusive rights to specific periods of initial processing" granted to it by

On November 2, 1982, following discussions between SEA, Westinghouse, and EEOC representatives, Westinghouse offered to reinstate Dixon. She was reinstated to her position as of January 3, 1983, at a salary she would have received had she been continuously employed between December 18, 1981, and January 3, 1983.

EEOC made no finding on Dixon's charge of discrimination but issued her a right to sue letter on June 16, 1983. Dixon then filed this action, alleging that Westinghouse had discriminated

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Title VII for those charges which the Worksharing Agreement assigns for initial processing to EEOC.

Section 5.d. of the Agreement provides for exceptions to the Worksharing provisions of section 4. Under section 5.d., where either MCHR or EEOC expresses interest in pursuing a charge which is the primary responsibility (under section 4) of the other agency, it can do so upon prompt notice to the other party.

against her on the basis of her sex, in violation of Title VII, and that the alleged conduct of Westinghouse constituted an intentional infliction of emotional distress, in violation of Maryland law. Westinghouse filed a motion for summary judgment and a supplemental motion for summary judgment.

The district court granted both Westinghouse's motion for summary judgment and its supplemental motion for summary judgment and dismissed the complaint. In doing so, the court held that Dixon's EEOC charge was untimely because she did not file it within 180 days of the alleged discrimination, as required under section 706(e0 of Title VII, 42 U.S.C., Section 2000e-5(e). The district court found that Dixon was not entitled to the extended 300-day charge-filing period provided in section 706(e), because she had not ini

tially instituted proceedings with MCHR. The district court further held that under the terms of the Worksharing Agreement between MCHR and EEOC, MCHR had waived the right to initially process the charge and it was, therefore, not authorized to process the charge before EEOC had resolved the claim. In addition, the district court held that Dixon's state tort claim was barred for failure to exhaust the grievance-arbitration procedures provided in the collective bargaining agreement to which she was subject at the time of her termination.

This appeal followed.

II

Dixon's primary contention on appeal is that the district court erred in holding that her EEOC charge was barred for failure to file it within 180 days of

her discharge. She further claims that the district court erred in determining that her state tort claim was barred for failure to exhaust the grievance-arbitration procedures. In addition Dixon alleges that the district court erred in concluding that Westinghouse did not waive any challenge to EEOC's jurisdiction by failing to first raise the issue with EEOC. Finally, she argues that, even if her EEOC charge was untimely filed, Westinghouse is equitably estopped from asserting the late filing as a defense. We reject all of appellant's contentions as meritless.

With respect to her allegation that the district court erred in holding that her EEOC charge was barred because it was not filed within 180 days of her dis charge, Dixon maintains that the sending of the Charge and Transmittal Form 212-A

to MCHR constituted a referral of the charge to the state agency within the meaning of section 706(e). She contends that MCHR processed the charge and, as evidenced by its notation on the Form 212-A, elected not to proceed on it. Appellant argues that because the charge was referred to the state agency, the extended 300-day time limit for filing provided in section 706(e), and not the 180-day limit, applied here. She asserts that the fact that EEOC did not refer the [2/] charge to

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2/ It is not necessary for us to decide the state statute of limitations issue here. Regardless of whether Dixon was required to file her charge withn the state's statute of limitations, the fact remains, as discussed infra, that Dixon did not initially institute an unlawful employment charge with MCHR.

MCHR within the state's statute of limitation did not make the filng of the charge untimely. Dixon relies upon an EEOC regulation which states that "[c]harges arising in jurisdictions having a 706 agency but which charges are apparently untimely under the applicable state . . . statute of limitations . . . are timely filed if received by the Commission within 300 days from the date of the alleged violation." 29 C.F.R., Section 1601.13(a).

We are unconvinced by appellant's arguments. Section 706(e) provides, in pertinent part, the following:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . ., except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a

> State or local agency with authority to grant or seek relief from such practice. . ., such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred.

42 U.S.C., Section 2000e-5(e) (emphasis added). The plain and unambiguous meaning of section 706(e) is that a Title VII charge is timely only if filed with EEOC within 180 days of the alleged discriminatory act. The only exception is when there is a state or local deferral agency and the charging party has initially instituted proceedings before that deferral agency. In such a situtation, the charge is deferred to that agency for "only one reason" --to give the state the opportunity to act and to "avoid federal intervention unless its need was demonstrated." Mohasco Corp. vs. Silver, 447 U.S. 807, 821 (1980) (footnote omitted). When such proceedings have been instituted in a de-

ferral state, a charge may be filed with EEOC until the 300th day, but not before the state agency has been give 60 days to consider the charge, unless state proceedings have terminated earlier. 42 U.S.C., section 2000e-5(C).

EEOC's promulgation of 29 C.F.R., section 1601.13(a), providing plaintiffs in deferral states 300 days in which to file charges with EEOC even if their state charges are untimely, cannot do away with the statutory requirement that a charge must initially instituted with the state agency in order for the 300-day filing period of section 706(e) to apply. As noted by the Supreme Court in Mohasco, EEOC's "'interpretation' of the statute cannot supersede the language chosen by Congress." 447 U.S. at 825 (footnote omitted). Section 706(e) expressly states that in order for the 300-day period for

filing EEOC charges to apply, the plaintiff must have "initially instituted proceedings with a State or local agency with authority to grant or seek relief from such [unlawful employment] practice." 42 U.S.C., section 2000e-5(e) (emphasis added). Such was not the situation here.

In the instant case, Dixon filed her EEOC charge 230 days after her termination. She filed no charge with MCHR, although EEOC did forward a copy of their charge to the state agency. Because under the Worksharing Agreement between MCHR and EEOC, MCHR had waived its right to process initially charges filed originally with EEOC, as well as those filed more than six months after the alleged violation, it was never contemplated that MCHR would play a substantive role in processing the charge. Moreover, the rationale for affording complainants in deferral states extra time to

file their EEOC claims is to allow them the opportunity first to pursue state remedies. This rationale is extremely lacking in this case, because the state had already waived its right to initially pro cess appellant's claim.

We conclude that EEOC's transmittal of the charge to MCHR was for informtional purposes only and did not constitute and "initially instituted" charge within the meaning of the statute. Dixon had not "initially instituted" proceedings with MCHR as required by Title VII and, consequently, she could not take advantage of the extended 300-day for filing Title VII charges. See Doski vs. M. Goldseker Co., 539 F.2d 1326, 1329-30 (4th Cir. 1976). Accordingly, we hold that because appellant did not file her EEOC charge within 180 days of her termination, her action was barred.[3/]

III

Upon consideration of the record, briefs and oral argument, we reject appellant's remaining contentions as meritless for the reasons stated by the district court. Dixon vs. Westinghouse Electric Corp., 615 F. Supp. 538 (D. Md. 1985).

IV

On the basis of the foregoing, the judgment below is affirmed.

AFFIRMED

3/ Because Dixon's EEOC charge was not filed until 230 days after her termination, we need not determine whether a filing with EEOC within 180 days and a referral by EEOC to the state agency would constitute a timely filing notwithstanding the fact that the state agency refuses to process the charge under the worksharing agreement because it was first filed with EEOC.

WORKSHARING AGREEMENT

Between

The Equal Employment Opportunity Commission
Baltimore District Office

and

The Maryland Commission on Human Relations

1. General

a. Inasmuch as it had been agreed between the Maryland Commission on Human Relations (hereinafter referred to as FEPA) and the Baltimore District Office of the Equal Employment Opportunity Commission (hereinafter referred to as the EEOC) that it is desirable to effect procedures to minimize duplication of effort in the processing of charges and to achieve maximum consistency of purpose and results, this agreement is hereby reached.

b. The FEPA has jurisdiction over allegations of employment discrimination in accordance with Article 49B, Maryland Code Annotated, as amended. The EEOC has jurisdiction over allegations of employment discrimination in accordance with Title VII of the Civil Rights Act, the Age Discrimination in Employment Act and the Equal Pay Act (EPA).

c. Where jurisdictional responsibilities overlap, it is the intent of the parties, to the extent possible, to use substantially compatible case handling Procedures and case processing forms.

2. Filing Charges of Discrimination

a. EEOC by this Agreement designates and establishes the FEPA as a limited agent of EEOC for the purpose of receiving charges on behalf of EEOC and the FEPA agrees to receive such charges. This delegation of authority does not include the right of the FEPA to make final determinations on the jurisdiction of EEOC over charges.

b. Each agency agrees to advise potential charging parties of their right to file with the other agency and will endeavor to help any person alleging discrimination in employment to draft a charge in a manner sufficient to satisfy the filing requirements of the other agency. Charges will be taken on a form mutually agreed upon by the parties.

3. Referral/Deferral of Charges

a. Each agency agrees to forward to the other agency within 48 hours of receipt all charges which may meet the jurisdictional requirements of the other agency. Such charges may be hand-delivered or sent by certified mail, return receipt requested. Each charge transmitted will be accompanied by an EEOC Form 155 and an EEOC Form 212-A, identified by charge number and indicating processing decisions made in accordance with this Agreement.

b. Charges received by one agency which ar to be initially processed by the other agency will be forwarded to the other agency with all supporting documents, including interview notes.

c. Upon receipt of a charge forwarded by the other agency, the receiving agency will review the charge and will respond to the sending agency within ten (10) work days of receipt of the charge. Such responses will be recorded on a copy of the EEOC Form 212-A which accompanied the charge. Responses shall include the accompanied receiving agency's charge number, acknowledgement of receipt where there is a concurrence with the sending agency's processing determination, or exceptions to the processing determination of the sending agency.

d. Each agency asserts that, after it has agreed that it will not process a charge, it will not subsequently decide to process that charge without the concurrence of the other agency, insofar as is possible.

4. Worksharing

a. Is the intent of both parties to avoid duplication of case processing efforts wherever possible. In order to achieve this objective, the EEOC and the FEPA agree to implement the following work-sharing provisions.

b. The FEPA will take primary responsibility for processing all charges originally received by the FEPA. In addition, the FEPA will assume primary responsibility for processing the following charges:

1. All charges received by EEOC against certain respondents if agreed to in writing by the parties.

2. Charges which allege at least one basis of discrimination which is no covered by EEOC.

3. Charges filed by the FEPA or its Commissioners.

c. The EEOC will take primary responsiblity for processing all charges originally received by EEOC, except as otherwise provided in paragraph 4(b). In addition, EEOC will process the following charges:

1. Charges filed by the EEOC or its Commissioners.

2. Charges where it is determined that immediate, temporary, or preliminary relief is appropriate and can be obtained most expeditiously through the federal courts.

3. Charges filed against the FEPA.

4. All charges received by the FEPA against certain respondents if agreed to in writing of the parties.

5. All charges which, in whole or in part, allege a violation of the Equal Pay Act and which are initially filed with EEOC.

6. All directed investigations under the Age Discrimination in Employment Act.

7. All charges covered under Title VI which are received by EEOC between 180 and 300 days after the alleged violation.

8. All charges identified by EEOC as referrals from other federal agencies that are against respondents who are recipients of federal financial assistance subject to 1) Title VI of the Civil Rights Act of 1964, 2) Title IX of the Educations Amendments of 1972, 3) State and Local Fiscal Assistance Act of 1972, as amended, and 4) provisions similar to Title VI and Title IX in federal grant statutes to the extent that such provisions are related to the prohibition of employment discrimination covered by Title VII and the Equal Pay Act of 1963. Charges in process by the FEPA as of October 1, 1982 are excluded and will be processed to completion by the FEPA.

9. All remaining charges not specifically reserved by this Agreement for the FEPA. Unless otherwise provided herein, charges received on the same day by both EEOC and the FEPA from the same Charging party against the same Respondent(s), shall be processed by EEOC.

d. In order to facilitate early resolution of charges, the FEPA hereby waives its exclusive rights to specific periods of initial processing which have been granted to the FEPA by Title VII for those charges assigned by this Agreement to EEOC for initial processing.

e. If for any reason an agency determines that it cannot process a charge for which it bears initial responsibility pursuant to this Agreement, that agency will immediately inform the other agency of its inability to process the charge, in writing.

5. Exceptions and Adjustment to Worksharing Provisions

a. The EEOC and the FEPA will periodically review paragraph 4 and make any necessary amendments.

b. It is understood and agreed that the division of primary responsibility for resolving charges must assign to each agency the number of charges that will most fully utilize its charge processing capacities. The implementation of this Agreement and any adjustments to this Agreement, will take into consideration the contractual requirements of the FEPA and will have the mutual consent of both parties.

c. Where either party has obtained a conciliation agreement or is administering or monitoring a legal order pertaining to a respondent, the party will, wherever possible, take primary responsibility for charges which are affected by such agreements or orders. The party wishing the exception will notify the other party immediately.

d. Any exceptions to worksharing provisions delineated in paragraph 4 above where either party expresses an interest in pursuing a charge over which it does not have primary responsibility for processing, the other party will wherever possible, refrain from assuming primary responsibility for processing the charge. The party wishing the exception will notify the other party immediately.

e. It is understood and agreed that charges of retaliation must receive prior-

ity. Both parties will endeavor to assure that this priority is met. Where one agency has a charge in active processing and a charge alleging retaliation is received by the other agency from the same Charging Party, against the same Respondent, that charge will be sent to the first agency to be consolidated with the original charge for processing. If the first agency is unable, for any reason, to promptly process this charge of retaliation, it will so notify the other agency in writing immediately.

6. Information Sharing

a. To facilitate charge processing activities each agency will make available, upon request of the other agency, copies of any records or documents acquired or developed in connection with charge processing, where such disclosure is not prohibited by law, regulations or inter agency agreement. Representatives of each agency, will be permitted to copy or obtain copies of such records or documents and to utilize the same in proceedings under their respective laws.

b. All communication regarding charges will include, insofar as possible, names of respondents and charging parties and EEOC and FEPA charge numbers.

c. Each agency agrees to comply with the confidentiality requirements of the other agency, especially with regard to records, documents or any other information obtained by one agency from the other agency. It is further understood and agreed that information, including information acquired or developed in connec-

tion with settlement or conciliation attempts, will not be made public where such disclosure would be contrary to statutory or regulatory provisions or policies applicable to settlement or conciliation proceedings. Sharing of such information, including information on settlement or conciliation attempts, by the EEOC and the FEPA with each other, shall not be deemed to be making such information public.

d. The EEOC may request or permit personnel of the FEPA to accompany and observe EEOC personnel on investigations and on conciliation of cases falling within their joint jurisdiction. Such procedures in no way shall detract from the responsibility of the EEOC under federal law.

e. The FEPA may request or permit personnel of the EEOC to accompany and observe FEPA personnel on investigations and conciliations of charges falling withnin their joint jurisdiction. Such procedures in no way shall detract from the responsibility of the FEPA under its law.

f. Both parties agree to provide each other with all resource and research data available and permitted by law, that will assist in the processing of charges.

7. Substantial Weight Review Process

a. The FEPA will provide a monthly report to EEOC of all actions taken on charges deferred to the FEPA for processing and of all actions taken on other charges received by the FEPA for EEOC. It is agreed that final actions may be reported on a weekly basis during the re-

porting month with the final submission made no later than the eighth (8) calendar day after the ending of the reporting month. Each report will include copies of written findings, agreements, final orders and other written findings, agreements, final orders and other final action closure documents in accordance with EEOC Order 916, Appendix A, Substantial Weight Review Proceduresand Appendix B, Certified FEP Agency Charge Review Procedures, and Appendix C, ADEA Contract Credit Review Manual. The final report will include EEOC Form 322, FEP Agency-Monthly Performance Report and a listing describing all charges and closure actions taken during the reporting month. The FEPA will make the case files available to the EEOC for review and, upon request, will provide copies of all evidence upon which such actions are based.

b. EEOC will give substantial weight to the final findings and orders of the FEPA in arriving at a determination as to whether reasonable cause exists. The final findings and orders will be reviewed to determine whether the practices prohibited and the remedies required are remedies required under federal law. Administrative closures and pre-determination settlements will be subject to the same review process as the final findings and orders of the FEPA.

c. EEOC will provide copies to the FEPA of all such reviews, evaluations and dispositions. Such reviews and evaluations will be designed to determine if the following items have been addressed in a manner to satisfy EEOC's standards:

1. All jurisdictional requirements.

2. Investigation of all issues alleged, with appropriate supporting documentation and theory.

3. Appropriate relief.

d. Where the EEOC does not accept the final findings and orders of the FEPA, the EEOC will provide copies to the FEPA of the determination letters, agreements or other closure documents subsequently issued by the EEOC.

8. Integration of Enforcement

a. To effectively integrate the enforcement or abilities of the FEPA and the EEOC, the FEPA will notify the EEOC when it determines it does not have the resources to take a case to hearing or to pursue litigation of a case/cases failing conciliation.

b. Thereafter. representatives of the FEPA and the EEOC will jointly review the above described case files. Following such review, the EEOC will determine what further enforcement action it will take.

9. Implementation of the Worksharing Agreement

a.Each Agency will designate one person as a liaison officer for the purpose of coordinating activities under this Agreement. insofar as possible, all requests for information and all questions concerning this Agreement and related matters will be handled by the designated

liaison officers.

b. Both parties will provide training to designated staff in order to assure that the purposes and intent of this Agreement are carried out effectively.

c. Representatives of each agency will meet ninety (90) days after the signing of this Agreement to review the Agreement and, if necessary, modify the agreement. The parties shall meet periodically thereafter to review the Agreement, but not less than once every six (6) months.

d. The terms and provisions of this Agreement may be renegotiated at any time by mutual consent of the parties.

10. Duration of this Agreement

a. This Agreement will remain in effect from October 1, 1985 to September 30, 1986.

b. The duration of this Agreement may be extended by mutual consent of the parties.

Dorothy E. Mead Director Baltimore District Office Equal Employment Opportunity	David L. Glenn Director Maryland Commission on Human Relations
August 30, 1985 Date	Date

SECTION 1601.13
FILING: DEFERRALS TO STATE AND LOCAL AGENCIES

(a) Initial presentation of a charge to the Commission.

(1) Charges arising in jurisdictions having no 706 Agency are filed with the Commission upon receipt. Such charges are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(2) A jurisdiction having a 706 Agency without subject matter jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit organizations) is equivalent to a jurisdiction having no 706 Agency. Charges over which a 706 Agency has no subject matter jurisdiction are filed with the Commission upon receipt and are timely filed if received by the Commission withn 180 days from the date of the alleged violaton.

(3) Charges arising in jurisdictions having a 706 Agency but which charges are apparently untimely under the applicable state or local statute of limitations are filed with the Commission upon receipt. Such charges are timely filed if received by the Commission within 300 days from the date of the alleged violation. Copies of all such charges will be forwarded to the appropriate 706 Agency.

(4) Charges arising in jurisdictions having a 706 Agency and which charges are apparently timely under the applicable state or local statute of limitations, are to be processed in accordance with the Commission's deferral policy set

forth below and the procedures in paragraph (a)(5) of this section.

(i) In order to give full weight to the policy of section 706(c) of the Act, which affords State and local fair employment practice agencies that come within the provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by Title VII and state or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The Commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to State and local agencies as is permitted by law and as in practicable.

(ii) Section 706(c) of Title VII grants States and their political subdivisions the exclusive right to process allegations of discrimination filed by a person other than a Commissioner for a period of 60 days (or 120 days during the first year after the effective date of the qualifying State or local law). This right exists where, as set forth in section 1601.70, a State or local law prohibits the employment practice alleged to be unlawful and a State or local agency has been authorized to grant or seek relief. After the expiration of the exclusive processing period, the Commission may commence processing the allegation of discrimination.

(iii) A 706 Agency may waive its right to the period of exclusive pro-

cessing of charges provided under section 706(c) of the Title VII with respect to any charge or category of charges. Copies of all such charges will be forwarded to the appropriate 706 Agency.

(5) The following procedures shall be followed with respect to charges which arise within the jurisdiction of a 706 Agency and which are apparently timely under the applicable state or local statute of limitations:

(i) Where any document, whether or not verified, is received by the Commission as provided in Section 1601.8 which may constitute a charge cognizable under Title VII, and where the 706 Agency has not waived its right to the period of exclusive processing with respect to that document, that document shall be deferred to the appropriate 706 Agency as provided in the procedures set forth below:

(A) All such documents shall be dated and time stamped upon receipt.

(B) A copy of the original document, shall be transmitted by registered mail, return receipt requested, to the appropriate 706 Agency, or, where the 706 Agency has consented thereto, by certified mail, by regular mail or by hand delivery. State or local proceedings are deemed to have commenced on the date such document is mailed or hand delivered.

(C) The person claiming to be aggrieved and any person filing a charge on behalf of such person shall be notified, in writing, that the document which he or she sent to the Commission has been forwarded to the 706 Agency pursuant to the provisions of section 706(c).

(ii) Charges which arise within the jurisdiction of a 706 Agency and which are apparently timely under the ap-

plicable state or local statute of limitations are deemed to be filed with the Commission as follows:

(A) Where the document on its face constitutes a charge within a category of charges over which the 706 Agency has waived its rights to the period of exclusive processing referred to in paragraph (a)(4)(iii) of this section the charge is deemed to be filed with the Commission upon receipt of the document. Such filing is timely if the charge is received within 300 days from the date of the alleged violation.

(B) Where the document on its face constitutes a charge which is not within a category of charges over which the 706 Agency has waived its right to the period of exclusive processing referred to in paragraph (a)(4)(iii) of this section, the Commission shall process the document in accordance with paragraph (a)(5)(i) of this section. The charge shall be deemed to be filing with the Commission upon expiration of 60 (or where appropriate, 120) days after deferral, or upon the termination of 706 Agency proceedings, or upon waiver of the 706 Agency's right to exclusively process the charge, whichever is earliest. Where the 706 Agency earlier terminates its proceedings or waives its right to exclusive processing of a charge, the charge shall be deemed to be filed with the Commission on the date the 706 Agency terminated its proceedings or the 706 Agency waived its right to exclusive processing of the charge. Such filing is timely if effected within 300 days from the date of the alleged violation.

(b) Initial presentation of a charge to a 706 Agency.

(1) When a charge is initially presented to a 706 Agency and the charging party requests that the charge be presented to the Commission, the charge will be deemed to be filed with the Commission upon expiration of 60 (or where appropriate 120) days after a written and signed statement of facts upon which the charge is based was sent to the 706 Agency proceedings, or upon waiver of the 706 Agency's right to exclusively process the charge, whichever is earliest. Such filing is timely if effected within 300 days from the date of the alleged violation.

(2) When a charge is initially presented to a 706 Agency but the charging party does not request that the charge be presented to the Commission, the charging party may present the charge to the Commission as follows:

(i) If the 706 Agency has refused to accept a charge, a subsequent submission of the charge to the Commission will be processed as if it were an initial presentation in accordance with paragraph (a) of this section.

(ii) if the 706 Agency proceedings have terminated, the charge may be timely filed with the Commission within 30 days of receipt of notice that the 706 Agency proceedings have been terminated or within 300 days from the date of the alleged violation whichever is earlier.

(iii) If the 706 Agency proceedings have not been terminated, the charge may be presented to the Commission within 300 days from the date of the alleged violation. Once presented, such a charge will be deemed to be filed with the Commission upon expiration of 60 (or where appropriate, 120) days after a written and signed statement of facts upon which the

charge is based was sent to the 706 Agency by certified mail or was otherwise received by the 706 Agency, or upon the termination of the 706 Agency proceedings, or upon waiver of the 706 Agency's right to exclusively process the charge, whichever is earliest. To be timely, however, such filing must be effected within 300 days from the date of the alleged violation.

(c) Agreements With Fair Employment Practice Agencies. Pursuant to section 705(g)(1) and section 706(b) of Title VII, the Commission shall endeavor to enter into agreements with 706 Agencies and other fair employment practice agencies to establish effective and integrated resolution procedures. Such agreements may include, but need not be limited to, cooperative arrangements to provide for processing of certain charges by the Commission, rather than by the 706 Agency during the period specified in section 706(c) and section 706(d) of Title VII.

(d) Preliminary relief. When a charge is filed with the Commission, the Commission may make a preliminary investigation and commence juridical action for immediate, temporary or preliminary relief pursuant to section 706(f)(2) of Title VII.

(e) Commissioner charges. A charge made by a member of the Commission shall be deemed filed upon receipt by the Commission office responsible for investigating the charge. The Commission will notify a 706 Agency when an allegation of discrimination is made by a member of the Commission concerning an employment practice occurring within the jurisdiction of the 706 Agency. The 706 Agency will be entitled to process the charge exlusively for a period of not less than 60 days if the 706 Agency makes a written request to the Com-

mission within 10 days of receiving notice that the allegation has been filed. The 60-day period shall be extended to 120 days during the first year after the effective date of the qualifying State or local law.

[46 FR 43039, Aug. 26, 1981, as amended at 46 FR 48189, Oct. 1, 1981]